

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
GOALPARA, ASSAM

PRESENT: D. MECH,
MEMBER, M.A.C.T., Goalpara.

MAC CASE NO. – 279 OF 2016.

Sona Miah
S/O – Abdul Rahman

----- Claimant.

Vs.

1. United India Insurance Co. Ltd. ----- Insurer of the car no. AS-25/F-5640
(Maruti Suzuki),
2. Shahjahan Ali ----- Owner of the car no. AS-25/F-5640 (Maruti Suzuki),
3. Azmol Hoque ----- Driver of the car no. AS-25/F-5640 (Maruti Suzuki).

----- Opp. Parties.

Advocates appeared in the case:

Mr. J. Islam ----- Advocate for the Claimant.

Mr. N. Das ----- Advocate for the Opp. Party no-1

Date of hearing Argument ----- 16.05.2019

Date of delivery of Judgment---11.06.2019

J U D G M E N T

1. The case of the claimant side in brief is as follows:

2. On 02.03.2016 at about 12 A.M., the claimant Sona Miya was proceeding from Goalpara towards Nobagata Simlitola by vehicle no. AS-25/F-5640 (Maruti Suzuki) as an occupant. When the vehicle reached Garomari under Matia Police station, on account of rash and negligent driving by its driver who lost his control dashed with a pucca wall as a result the claimant suffered injuries at his eye,

nose and head. Soon after the accident the claimant was admitted at Hayat Hospital for treatment. He also had to undergo treatment at G.M.C.H. & regional dental hospital at Guwahati.

3. Regarding the accident one Mirza Osman Goni lodged an FIR with the O/C of Matia P/s whereupon Matia P/S Case no-78/2016 (G.R. No. 949/2016) is registered, investigated & on close of investigation submitted charge sheet against the Opp. Party no-3, driver of the offending vehicle u/s 279/338 IPC.

4. The Opp. Party No-1, United India Insurance Co. Ltd., Opp. Party No-2 & Opp. Party No-3 the owner & driver of the offending vehicle, contested the case by filing their written statements.

5. The Opp. Party No.1, United India Insurance Co. Ltd., in its W.S. besides denying all the averments made in the claim petition, stated inter-alia, that the policy no-1301053115P110199348 against the offending vehicle is a private car liability only policy and under the said policy no occupant is covered. The claimant is an occupant of a private vehicle; as such the insurance company has no liability to cover the risk of the occupant of a private car. It is further stated that, the claimant has to produce all police documents pertaining to the case and also to establish that he was travelling by the offending vehicle.

6. The owner & driver of the vehicle Opp. Party No-2 & 3 inter-alia stated that, the vehicle is insured with the Opp. Party no-1, & it was valid at the relevant time of the accident. The driver had also effecting driving license no. AS-1820160014557 at the time of the accident. As such they have no responsibility to indemnify the claimant.

7. Upon the pleadings of both sides, the following issues are found to be proved for the just decision of the cases:

- I. Whether the claimant Sona Miya sustained injuries in the alleged Motor Vehicle accident dated 02.03.2016 involving the vehicle bearing registration no. AS-25/F-5640 (Maruti Suzuki) and whether the said accident had taken place due to rash and negligent driving of the aforesaid vehicle?

- II. Whether the claimant side is entitled to compensation and if yes, to what extent and by whom amongst the Opp. Parties, the said compensation amount will be payable?
8. To prove the case, the claimant examined himself as PW-1 & During the examination of the claimant he exhibited some documents as follows-
- i. Ext. no-1: Accident Information Report,
 - ii. Ext. no-2: Certified copy of F.I.R,
 - iii. Ext. no-3: Copy charge sheet,
 - iv. Ext. no-4: Copy seizure list,
 - v. Ext. no-5: Copy MVI report
 - vi. Ext. no-6: Certified copy injury report,
 - vii. Ext. nos-7 to 10: Advice slips,
 - viii. Ext. nos-11 to 12: X-Ray reports,
 - ix. Ext. no-13: Medical report,
 - x. Ext. no-14: Medical bill,
 - xi. Ext. no-15: Medical report,
 - xii. Ext. nos-16 to17: X-ray Plates.

9. The Opp. Party No-1 insurer side in order to disown its liability examined Mr. Amitava Modak as DW-1 who has exhibited the policy being marked as Ext. no-A.

10. Heard Argument from the learned advocate of both sides. In fact both the Id. counsel for the respective parties submitted their written argument wherein cited some case laws decided by Honble Supreme court & various Honble. High Courts. I have perused the materials on record and after consideration of the same, the issues are decided as under:

ISSUE NO - I

(I) The claimant has averred in his claim petition and also stated in his evidence that on 02.03.2016 at about 12 A.M., he was proceeding from Goalpara towards Nobagata Similtola by vehicle no. AS-25/F-5640 (Maruti Suzuki) as an occupant. When the vehicle reached Garomari under Matia Police station, on

account of rash and negligent driving by its driver lost his control over the vehicle & dashed with a pucca wall as a result he suffered injuries at his eye, nose & head. Soon after the accident he was admitted at Hayat Hospital for treatment. He also had to undergo treatment at G.M.C.H. & regional dental hospital at Guwahati. Regarding the accident one Mirza Osman Goni lodged an FIR with the O/C of Matia P/s whereupon Matia P/S Case no-78/2016 (G.R. No. 949/2016) is registered, investigated & on close of investigation submitted charge sheet against the Opp. Party No-3, driver of the offending vehicle u/s 279/338 IPC. He further deposed that, he incurred Rs.1,00,000/- as medial expenditure. He is a vegetable vendor used to earn Rs.15,000/- per month.

(II) Examined the AIR (Ext. no-1) & other the Police documents pertaining n to Matia P/S Case no-78/2016 (G.R NO-949/2016). It is evident that, the I/O investigated the case and on being found a prima facie case u/s279/338 against the driver of the vehicle no. AS-25/F-5640 (Maruti Suzuki) & submitted charge sheet (Ext. no-3).

(III) In support of the oral evidence, the claimant has submitted before the Tribunal, the aforesaid documents viz., the Accident Information Report (Ext. no-1), FIR (Ext. no-2), Charge sheet (Ext. no-3) seizure list (Ext. no-4) MVI report(Ext. no-5), medical advice slips(7 to 10) , cash memos (Ext. No-14), injury report (Ext. no-6), X-ray plates (Ext. no-16 to 17) etc. The factum of accident involving the offending vehicle and sustaining of injuries by the claimant, remained unshaken in his cross-examination. Indeed, the factum of the claimant having sustained injuries is also not in dispute. The Opp. Party side did not adduce any rebuttal evidence denying the accident causing injuries upon the claimants. Even the Opp. Party no-3, the driver of the offending vehicle who had personal knowledge regarding the accident, only filed W.S. in the case and there after opted not to proceed in the case and avoided the witness box. It is held in Lallamma Vs. Balaji And Ors.,2004 ACJ, Karnataka High Court in para no 4 that,' filing of the charge sheet against the driver is also a prima facie case to hold that the driver of the said lorry was responsible for the accident and burden shifts on him to prove the same."

(IV) In view of the above evidence of the claimant side and in the absence of any evidence contrary thereto, there can be no escape from the conclusion that the accident causing injuries upon the person of the claimant, had taken place due to use of the vehicle bearing registration no. AS-25/F-5640 (Maruti Suzuki). Hence, this issue is decided in favour of the claimant side.

ISSUE NO - II

(I) In view of the discussion and decision made in Issue no-I, I am of the opinion that the claimant side of the case is entitled to compensation in the claim petition.

(II) Now, coming to the quantum of compensation which the claimant side of the case is entitled to, is assessed as under:

(III) The claimant Sona Miah aged about 36 years as PW-1 in his evidence stated that due to the accident, he had sustained grievous injuries at his eyes, nose, head, chest and multiple injuries over his body. I have examined the injury report (Ext. no-6) wherein found that, the claimant suffered simple injury over his eyebrows & radish left eye & simple injury at his nose, face & teeth (Ext. no-8, 11, 12 & 13). He in his evidence stated that he had incurred Rs. 1,00,000/- (Rupees one lakh) only towards his treatment as medical expenditure. In support of the injuries sustained by the claimant and the treatment underwent thereof, he has submitted before the Tribunal, X-Ray Plate being marked as Ext. No-16 & 17 & other medical documents as medical evidence.

(IV) I have scrutinized the medical bill Ext. no-14 issued by Hayat hospital & found that, the claimant incurred Rs.400/- as medical expenditure.

(V) As per evidence available on record, I don't find that, the claimant had to undergone treatment at G.M.C.H or any other hospital as an indoor patient. As the claimant has undergone treatment, has incurred some expenditure towards medical treatment, conveyance, maintaining attendants, food etc. and therefore, the claimant is entitled to some amount of pecuniary damages as incidental expenditure. As the claimant has sustained injuries so, I am of the opinion that the claimant is entitled to some amount of non-pecuniary damages on account of pain, shock and suffering under which he had to pass over.

(VI) Thus, having considered the facts and circumstances of the case and the nature of injuries sustained by the claimant and the expenditure incurred thereof, just and reasonable compensation which the claimant is entitled to is assessed as under.

Medical expenditure -----	Rs.	400.00	
Incidental charges -----	Rs.	5,000.00	
Pain, shock and suffering -----	Rs.	15,000.00	
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Total -----	Rs	20,400.00	(Rupees Twenty thousand four hundred) only.

(VII) Now, coming to the question as to who amongst the opposite parties will have to satisfy the award. There is no dispute regarding the insurance policy of the offending vehicle at the time of accident with the Opposite Party no-1, United India Insurance Co. Ltd.

(VIII) In the case in hand, it is found from the evidence of DW-1 that, the policy no- 1301053115P110199348 against the vehicle no. AS-25/F-5640 is a private car Liability so under this policy no occupants are covered. As per the evidence of DW-1 the instant policy does not cover the risk of the occupant/gratuitous passenger of a private car. I have examined the insurance policy (Ext. no-A) & found that, the Ext. no-A is an act policy, but not package/comprehensive policy and also no extra premium paid for the insurance coverage of the occupant.

(IX) In "The Branch Manager, The New India Assurance Co. Ltd. Vs. Mahadev Pandurang Patil and Another", reported in ILR 2011 KAR 850, it is held that, "it is settled law that if the Insurer has not collected extra premium, it is not liable to cover the risk of the occupants of the said Jeep. It is worthwhile to extract the relevant paragraph 17, which reads thus:

In view of the authoritative pronouncement of the Apex Court holding that an occupant/inmate/passenger in a private car, is not a third party, the finding recorded by the tribunal that the insurance policy issued covers the risk of such persons and therefore the insurance company is liable to pay compensation amount is illegal and

contrary to the law declared by the Apex Court. In fact, in the policy, no additional premium is received by the insurance company to cover the risk of such persons. It is clear from the terminology used in the policy which fact is not in dispute. In one of the cases, additional premium is collected to loading the risk of third party only, as is clear from the policy that loading was not meant to cover risk of inmates of a private car and therefore, merely because an additional premium is collected under the said policy, it cannot be inferred that the risk of inmates of a car are covered. The words are specific that the loading is done in order to cover only third party risk, it is not a case of additional premium being collected to cover the risk of inmates along with third parties. Therefore, in the facts of this case, we are satisfied, as the insured has not paid additional premium and the insurance company has not collected any additional premium, the risk of the occupants of a private car was not covered. Therefore, liability foisted on the insurance company cannot be sustained and accordingly, it is hereby set aside." (emphasis supplied) Therefore, it can be seen that, in the instant case, it is not the case of the owner of the offending vehicle that he has paid extra premium to cover the risk of the inmates of the Jeep nor it is established that the Insurer has collected extra premium, covering the risk of the occupants of the Jeep. Hence, having regard to the well settled law laid down in the aforementioned decision, we are of the considered view that the direction issued by Tribunal to the appellant Insurer to indemnify the award cannot be sustained and is liable to be set aside.

(X) It is clear from the materials on record that though at the time of accident, the offending vehicle was insured with Opp. Party no-1, but the said policy is not comprehensive/package policy & no any additional premium paid for covering the risk of the occupant, so the Opp. Party no-1 has no responsibility to indemnify the claimant. Accordingly the Opp. Party no-1, United India Insurance Co. Ltd. is exempt from liability to satisfy the award.

(XI) The Opp. party no-2 the owner of the vehicle no. AS-25/F-5640 (Maruti Suzuki) has the liability to pay the compensation to the claimant.

A W A R D

1. Rs. 20,400.00 (Rupees Twenty thousand four hundred) only with interest @ 6% p.a. from the date of filing the claim petition on 21.10.2016 till payment. The Opp. Party no-2, Shahjahan Ali is directed to pay the award to the claimant side within one month from the date of this order.
2. Free copy of the Judgment is given to the both sides forthwith.
3. The case is disposed on contest.
4. Claim petition is partly allowed.
5. I make no order as to the cost.
6. Given under my hand and the seal of this Tribunal on this 11th day of June 2019.

Dictated and Corrected by me.

(D. Mech)
Member,
Motor Accident Claims Tribunal,
Goalpara.

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Goalpara.